Solomon Islands

R v Paul

[2009] SBHC 44

High Court
Mwanesalua J
1 September 2009

Criminal evidence – Admissions and confessions – Voluntary statement – Illiterate accused – Caution oral statement made by accused to police – Admissibility – Guidelines – Judges' Rules – Application.

The accused was cautioned and interviewed about an allegation of rape made against him by the victim. He could neither read nor write. He was warned that he could remain silent. He elected to give a statement in relation to the rape allegation. Afterwards, he was not asked if he wished to alter, correct or add anything to his statement. He subsequently challenged the admissibility of the caution statement, alleging that the interviewing and recording police officer had breached the Judges' Rules by: not giving him an opportunity to write his own statement; not giving him an opportunity to alter anything, correct any thing or add anything to the record of interview and not reading back the statement to him. In evidence one of the police officers, who claimed to have witnessed the interview, stated that the record of interview had in fact been read back to the accused.

HELD: Record of interview admitted.
The question for the court was whether the use of the evidence in the caution statement with certain omissions would be fair or unfair to the accused. First, the language of the Judges' Rules was not imperative but merely advisory. Second, the interviewing and recording officer had substantially complied with the spirit of the rules. The most important point was that the accused, who could not read or write, had been warned that he could remain silent. The accused understood the rape allegation made against him and had not satisfied the court that admitting the statement would be unfair to him at trial. The record of interview would therefore be admitted (see pp 235–237, below). *R v Viosin* [1918] 1 KB 531, *R v Lee* (1950) 82 CLR 133 and *Ben Tofola v R* (Criminal Appeal No 27 of 1993, unreported), Sol Is CA, considered.

Cases referred to in judgment

Ben Tofola v R (Criminal Appeal No 27 of 1993, unreported), Sol Is CA
R v Lee (1950) 82 CLR 133, Aus HC
R v Viosin [1918] 1 KB 531, [1918–19] All ER Rep 491, UK CCA

Other source referred to in judgment
Judges' Rules

Application
The accused, Eddie Paul, challenged the admissibility of a caution statement he made to the police at Rove on 10 January 2006, alleging that the interviewing and recording police officer had breached the Judges' Rules. The facts are set out in the judgment.

DPP in person and *Ms Tafoa* for the Crown.
Mr Cavanagh for the accused.

1 September 2009. The following judgment was delivered.

MWANESALUA J.
Eddie Paul, 'the accused', challenged the admissibility of the caution statement he made to the police at Rove on 10 January 2006. He alleges that the interviewing and recording police officer breached the Judges' Rules by:
(1) not giving him an opportunity to write his own statement;
(2) not giving him an opportunity to alter anything, correct anything or add anything to the record of interview and
(3) that the statement was not read back to him.
Former PC Surii and PC Vouza gave evidence on the conduct of the interview and the recording of it. Mr Surii said that he interviewed the accused at the Sensual Assault Unit Office at Rove on 10 January 2006. His witnessing officers were PC Vouza and PPF Advisor Gino Gaspari. He conducted the interview in question-and-answer form. He sat in front of a computer and typed the questions he put to the accused and their answers with that computer. He typed the questions and answers word by word. He read the record of interview back to the accused after he typed it. The accused agreed with the statement. He then printed it out and it was signed by the accused, PC Vouza, PPF Gaspari and himself. The interview was conducted in pijin, the language which the accused understood. In his evidence PC Vouza confirmed that the record of interview was read back to the accused and that he was one of the witnessing officers during the interview.

THE LAW
The preliminary part of the Judges Rules relevantly state:

> 'Courts want to be fair to police officers who have a hard job to do in bringing cases to court but also be fair to persons who are suspected and accused of crimes. The law says that if a man says something it may be brought up in court as evidence. But the court must be satisfied that the man said what he did of his own free will, that is, that he was not forced or threatened or promised something and he knew what he was doing. The following rules should be used in relation to interviews, as then the court can see that a man was given the right warnings.'

The rules also require an accused person to be given the opportunity to write his own statement. The rules state:

> 'If you wish to remain silent you may do so. If you wish to, you may give a written statement. You can write it or I will. That is up to you. If you give a written statement it may be produced to a court if you go to court. Do you wish to give a written statement?'

The rules further provide an opportunity for an accused to make any changes to the record of interview if written by a police officer. The rules state:

> 'The suspect should be given a chance to read the statement or it should be read to him. He should be asked if he wants to alter anything, correct anything or add anything. If he says he does, alterations should be made as requested or he should make the alterations himself.'

In *R v Lee* (1950) 82 CLR 133 at 154 the High Court of Australia said:

> 'As has already been pointed out, the protection afforded by the rule that a statement must be voluntary goes so far that it is only reasonable to require that some substantial reason should be shown to justify a discretionary rejection of a voluntary admission. The rules may be regarded in a general way as prescribing a standard of propriety, and it is in this sense that what may be called the spirit of the rules should be regarded. But it cannot be denied that they do not in every respect afford a very satisfactory standard. Their language is in some cases imperative and in others merely advisory: sometimes the word "must" is used: sometimes the word "should", and the tendency to take them as a standard can easily develop into a tendency to apply rejection of evidence as in some sort a sanction for a failure by a police officer to obey the rules of his own organization, a matter which is of course entirely for the executive. It is indeed, we think, a mistake to approach the matter by asking as separate questions, first, whether the police officer concerned has acted improperly, and if he has, then whether it would be unfair to reject the accused's statement. It is better to ask whether, having regard to the conduct of the police and all the circumstances of the case, it would be unfair to use his own statement against the accused.'

In *R v Viosin* [1918] 1 KB 531 at 539–540 Lawrence J said:

> 'These rules have not the force of law; they are administrative directions the observance of which the police authorities should enforce upon their subordinates as tending to the fair administration of justice. It is important that they should do so, for statements obtained from prisoners, contrary to the spirit of these rules, may be rejected as evidence by the judge presiding at the trial.'

In *Ben Tofola v R* (Criminal Appeal No 27 of 1993, unreported), Sol Is CA, the court said:

> 'Accused must point to some material in evidence which will satisfy the court that admitting the evidence will be unfair.'

a There is evidence that the accused cannot read. His statement was read to him by then police officer Surii. He was cautioned and told that he was being interviewed about an allegation of rape made against him by the victim. He was told that the alleged rape occurred in Francis Loxie's house at New Geza on the previous day. He understood that allegation. It is clear that he was not given an opportunity to write his own statement. But the accused could not b read and, impliedly, write because of his lack of formal education. Further, he was not asked if he wished to alter, correct or add anything to his statement. The most important thing is that he was warned that he could remain silent. He understood that but he elected to give a statement in relation to the rape allegation made against him by the victim. My duty as trial judge is to see that c the accused has a fair trial according to law. The question here is whether the use of the evidence in the caution statement with the omissions alluded above would be fair or unfair to the accused. First, the language of the rules is not imperative but merely advisory. And second, the interviewing and recording officer has substantially complied with the spirit of the rules. The accused has not satisfied the court that admitting the statement will be unfair to him in d this trial. The record of interview will therefore be admitted.